

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNIFUND CCR, LLC, as assignee of,)	
)	
Plaintiff,)	8:12CV426
)	
V.)	
)	
TIMOTHY L. ASHFORD,)	FINDINGS AND
)	RECOMMENDATION
Defendant.)	
)	

Plaintiff initially filed this debt collection action in the County Court of Douglas County, Nebraska. ([Filing 1](#).) On December 13, 2012, Defendant removed the suit to this Court, stating that jurisdiction exists based on Defendant's affirmative defenses and counterclaims which are alleged under the Fair Debt Collection Practices Act, [15 U.S.C. § 1692](#). (*Id.*)

Plaintiff has filed a motion requesting that this action be remanded to state court. ([Filing 10](#).) Plaintiff argues that this Court lacks federal and diversity jurisdiction because Plaintiff has not raised any federal questions and the amount in controversy is less than the \$75,000 jurisdictional minimum required for diversity jurisdiction. Defendant has not responded to Plaintiff's motion to remand.

The Court finds that this action should be remanded to state court. Diversity jurisdiction is clearly lacking as Plaintiff seeks to recover an amount far less than the jurisdictional minimum. Moreover, Plaintiff has not raised any federal questions and, contrary to Defendant's assertion, federal question jurisdiction does not exist simply by virtue of Defendant's affirmative defenses and counterclaims. Federal question jurisdiction "is determined solely by the allegations contained in the plaintiff's complaint. It is well-established that a defendant cannot remove based on a counterclaim." [Duckson, Carlson, Bassinger, LLC v. Lake Bank, N.A.](#), 139 F. Supp.2d 1117, 1118 (D. Minn. 2001) (citations omitted). "[D]efenses and counterclaims under the federal Fair Debt Collection Practices Act are inadequate to confer federal question jurisdiction." [EKJ & D, LLC v. Green](#), No.

8:12CV318, 2012, WL 6017984, *1 (D. Neb. Nov. 2, 2012).

Accordingly,

IT IS HEREBY RECOMMENDED to Chief United States District Court Judge Laurie Smith Camp that this case be remanded to the County Court of Douglas County, Nebraska.

DATED March 1, 2013.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**

NOTICE

Pursuant to NECivR 72.2 any objection to this Findings and Recommendation shall be filed within fourteen (14) days from the date of service. Failure to timely object may constitute a waiver of any objection.